

FILED 17 SEP 13 11:15 USDC-ORP

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PENDLETON DIVISION

DONALD-ERNEST ALLEE,

Plaintiff,

Civil No. 10-655-SU

v.

FINDINGS AND  
RECOMMENDATION

OREGON DEPARTMENT OF  
CORRECTIONS, et al.,

Respondent.

SULLIVAN, Magistrate Judge.

Plaintiff filed a "Notice of Removal" seeking to "remove" claims from a state court proceeding to this court. By Order (#11) entered July 29, 2010, the "Notice" was construed as an

attempt to allege civil rights violations. However the "complaint" failed to comply with the minimal pleading requirements of the Federal Rules and was otherwise deficient.

Plaintiff was advised of the deficiencies of his complaint and allowed 30 days to file an amended complaint. Plaintiff was advised that failure to file an amended complaint would result in the dismissal of this action for failure to prosecute.

Plaintiff has not filed an amended complaint as ordered or requested an extension of time in which to do so. Accordingly, plaintiff's claims should be dismissed without prejudice and this action should be dismissed for failure to prosecute. Plaintiff's Motion for Summary Judgment (#13) and Second Motion for Temporary Injunctive Relief (#14) should be denied as moot.

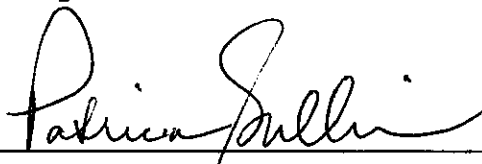
This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written

objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

### ***Certificate of Appealability***

*Should petitioner appeal, a certificate of appealability should be denied as petitioner has not made a substantial showing of the denial of a constitutional right. This cause is not appropriate for appellate review. See, 28 U.S.C. § 2253(c)(2).*

DATED this 8<sup>th</sup> day of September, 2010.

  
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Patricia Sullivan  
United States Magistrate Judge